IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

S.B. CIVIL SECOND APPEAL NO.409/05
Rajendra Kumar & Ors. Vs. State & Ors.

Against judgment and order dated 30.07.2005 passed by learned Addl. District Judge No.2, Sri Ganganagar in Civil Appeal No. 07/2005 - Rajendra Kumar & Ors. Vs. State & Ors.

DATE OF JUDGMENT :: November 23,2005.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. G.J. Gupta for appellants.

BY THE COURT:

This appeal has arisen out of judgment and order dated 30.07.2005 passed by learned Addl. District Judge No.2, Sri Ganganagar passed in Civil Appeal No.07/2004 which was filed against the judgment and decree dated 22.09.2004 passed by the Court of Addl. Civil Judge (Junior Division) No.1, Sri Ganganagar in Civil Suit No.14/03 by the

appellant-plaintiffs.

Brief facts of the case are that the appellant-plaintiffs along with others filed a suit challenging orders dated 31.10.2002 and 28.12.2002 passed by respondent-defendants stating therein inter-alia that as there was allegation that the agriculturist of village 1-LC broke the canal illegally and irrigated their land, the Assistant Irrigation Officer sent letter to respondent No.2 on 14.10.2002 and on the basis of that defendant No.2 vide his order dated 31.10.2002 imposed penalty of 21 times of Tawan and water turn on the agriculturists of that area for one year. Against that order, appeal was preferred before defendant No.3, who, on 28.10.2002 dismissed the appeal and confirmed the order of defendant No.2. An FIR was also lodged of the incident at Police Station, Vijay Nagar, in which FR was filed by the police.

On filing a suit by the appellant-

plaintiffs in the Court of Addl. Civil Judge (Jr. Div.) No.1, Sri Ganganagar, against the aforesaid orders of respondent-defendants No.2 & 3 for cancellation, the matter proceeded with. It was averred in the plaint that the orders were passed in order to harass the plaintiffs whereas neither they had broken the canal nor were found doing so and the allegation of breaking the canal was made in order to save the defendants themselves. The defendants, however, despite a number of opportunity being given did not file their written statement and on 09.05.2003 ultimately their evidence was closed. Likewise, the plaintiffs too did not produce evidence in support of their case and on their not doing so their evidence was also closed. The learned trial Court after hearing the parties framed issues to the effect as to whether the orders passed by defendants being against law are liable to be cancelled and if so to what relief the plaintiffs are entitled. The learned Judge decided the issues against plaintiffs and

dismissed the suit.

Aggrieved, the appellant-plaintiffs preferred appeal before the learned Addl. District Judge No.2, Sri Ganganagar, who heard the matter and affirmed the judgment and decree passed by leaned trial Court vide order dated 30.07.2005.

The appellant-plaintiffs being dissatisfied have approached this Court by way of this second appeal filed under Sec.100 CPC challenging the judgment and decree of the two courts below.

The matter was listed today before Hon'ble Mr. Justice Tatia but as that Bench was not formed, a prayer for taking up the matter was made by the learned counsel saying that the matter was of urgent nature.

On a first blush, it appears that the file of the case is repleat with defects.

There are as many as 11 defects pointed out by the office and a note has been put by the office that the certified copy of the order dated 22.09.2004 shows that Hetram, Gopal Ram, Karta and Hanuman who were parties to the proceedings before the learned two courts below have not been joined in the array of appellants in this appeal. There are also reports of office dated 09.11.2005, 17.11.2005 and 21.11.2005 stating that the defects have not been removed. The plaintiffs since inception of the proceedings have been lethargic and have not cared to plead their case properly. Their conduct before the learned trial Court has come on record which shows that they were not interested in producing evidence in support of their case despite several opportunities being given to them which fact has been taken note of by the first appellate Court in its judgment. It has also come on record that 7 chances were given to the plaintiffs to produce evidence in support of their case but they failed to do so and lastly on 22.09.2004 they made it clear

that they did not want to produce any evidence in support of their case. The first appellate Court finding it a fault on the part of appellant-plaintiffs affirmed the judgment and decree passed by learned trial Court.

I have heard learned counsel for the appellant-plaintiffs.

The learned counsel appearing on behalf of appellants could not make out any case or able to show any law point involved in second appeal requiring indulgence of this Court rather he even failed to properly answer about deletion of some of the persons in the array of appellant-plaintiffs.

Looking to the overall facts and circumstances of the case, I do not find it a case in which anything is to be decided on law point by this Court. Further the orders challenged imposing penalty have expired long back and nothing is to be gained even if the

same are cancelled now.

In view of the above discussion, the second appeal is dismissed summarily. There shall be no orders as to costs.

(SATYA PRAKASH PATHAK)J.

/jpa